ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE
DIVISION III

CA06-417

December 6, 2006

LaFONDA ROBBINS APPELLANT	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. CV 2005-2171]
V.	HON. KIM MARTIN SMITH, JUDGE
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. APPELLEE	AFFIRMED

The appellant defaulted on a mortgage she executed to appellee. After appropriate notice of default and intention to sell was given, a sale was conducted on June 20, 2005, pursuant to the terms of the mortgage and the Arkansas Statutory Foreclosure Act created by Act 53 of 1987 and codified at Ark. Code Ann. §§ 18-50-101 through 117. Appellee purchased the residence at the foreclosure sale for the sum of $51,000. Notice to vacate and quit was served on appellant without result, whereupon appellee filed an unlawful detainer action on October 3, 2005. After a hearing, the trial court entered a judgment for possession in favor of appellee on February 3, 2006. Appellant filed a notice of appeal from the February 3 judgment on February 15, 2006. On appeal, appellant asserts that the bid entered by appellee at the sale was less than two-thirds of the total outstanding indebtedness, and

argues that the sale is therefore void and the judgment of possession must be reversed. We affirm.

It is true that Ark. Code Ann. § 18-50-107(b)(3) (Repl. 2003) provides that, in a sale under the Arkansas Statutory Foreclosure Act, no bid shall be accepted that is less than two-thirds of the entire indebtedness due at the date of sale. It is also true that the Arkansas Statutory Foreclosure Act, being in derogation of common law, must be strictly construed. *Henson v. Fleet Mortgage Co.*, 319 Ark. 491, 892 S.W.2d 250 (1995). However, *Henson* was an appeal from the denial of a petition to set aside a nonjudicial foreclosure sale; the appellant in the present case filed no petition to set aside the sale, but is instead making a collateral attack on the sale in the context of her appeal from a judgment of possession entered in a subsequent unlawful detainer action. Even assuming, without deciding, that the alleged defect in the manner of sale was such as to render the sale and subsequent orders based thereon void and thus subject to collateral attack, *see Childress v. McManus,* 282 Ark. 255, 668 S.W.2d 9 (1984); *see also Henson v. Fleet Mortgage Co.*, *supra*, appellant has failed to provide us with a record sufficient to show that appellee's bid was, in fact, less than two-thirds of the total outstanding indebtedness and therefore in violation of Ark. Code Ann. § 18-50-107(b)(3). The burden is on the appellant to bring up a record sufficient to demonstrate that the trial court was in error, and where the appellant fails to meet this burden, we have no choice but to affirm the trial court. *Dodge v. Lee*, 352 Ark. 235, 100 S.W.3d 707 (2003).

Affirmed.

GLADWIN and ROBBINS, JJ., agree.